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***Electronically Filed On: November 14, 2020***

*Counsel for Shelley D. Krohn, Chapter 7 Trustee*

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
 LAS VEGAS LAND PARTNERS, LLC,  
  
 Debtor.

Case No. BK-S-19-15333-MKN  
 Chapter 7

**EX PARTE APPLICATION TO EMPLOY**  
**KEITH HARPER, MAI AS APPRAISER**  
**AND PAY FEE PURSUANT TO 11 U.S.C.**  
**§§ 327(a), 328(a), AND 330 AND**  
**FEDERAL RULES OF BANKRUPTCY**  
**PROCEDURE 2014 AND 2016**

Date of Hearing: N/A  
 Time of Hearing: N/A

Judge: Honorable Mike K. Nakagawa<sup>1</sup>

Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case, by and through her counsel, Jacob L. Houmand, Esq. and Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Ex Parte Application to Employ Keith Harper, MAI As Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Application”).

This Application is filed pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of Bankruptcy Procedure 2014. The Application is based on the following Memorandum of Points

<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

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and Authorities, the *Declaration of Shelley D. Krohn In Support of Ex Parte Application to Employ Keith Harper, MAI As Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Trustee Declaration”), the *Declaration of Keith Harper, MAI In Support of Ex Parte Application to Employ Keith Harper, MAI As Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Harper Declaration”), and the *Declaration of Jacob L. Houmand, Esq. In Support of Ex Parte Application to Employ Keith Harper, MAI As Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Houmand Declaration”), all of which are filed separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Application is also based on the pleadings and papers on file herein, and any argument that may be entertained at any hearing on the Application.<sup>2</sup>

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. STATEMENT OF FACTS**

1. On August 19, 2019, Las Vegas Land Partners, LLC (the “Debtor”) filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1].<sup>3</sup>

2. On August 19, 2019, the Trustee was appointed as the Chapter 7 Trustee in the Debtor’s bankruptcy case [ECF No. 2].

3. On October 3, 2019, the Debtor filed its bankruptcy schedules [ECF No. 20].

4. The Debtor’s Schedule A/B did not identify any real or personal property. *See* Schedule A/B [ECF No. 20], pp. 3-5.

5. The Trustee’s investigation of the Debtor’s financial affairs uncovered that the Debtor is the sole member of Wink One, LLC (“Wink One”) that, in turn, owns a forty percent

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<sup>2</sup> The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-captioned bankruptcy case, including adversary proceedings, pursuant to Rule of Evidence 201, incorporated by reference by FRBP 9017.

<sup>3</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

(40%) ownership interest in the real property described as: the city block bounded by Casino Center, Bonneville, South 1st and Garces Streets, Las Vegas, Nevada [APN 139-34-301-008] (the “Property”).<sup>4</sup>

6. The remaining sixty percent (60%) ownership interest in the Property is owned by Brookfield Asset Management (“Brookfield” and together with the Trustee, the “TIC Owners”).

7. The Property is currently leased to the Regional Transportation Commission of Southern Nevada (the “RTC”) until 2048.

8. On April 7, 2022, the Court entered an *Order Granting Application to Employ Cushman & Wakefield U.S., Inc. DBA Cushman & Wakefield to Sell Certain Real Property and to Pay Commission Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* [ECF No. 104] that authorized the employment of Cushman & Wakefield U.S., Inc. dba Cushman & Wakefield (“Cushman”) as real estate broker to assist with the sale of the Property.

9. The Trustee has commenced negotiations with the RTC to purchase the Property.

10. The RTC has agreed to engage two appraisers to obtain valuations of the Property in furtherance of negotiations.

11. The RTC has agreed to have their appraisers meet with an appraiser employed by the TIC Owners to discuss the valuation of the Property before any reports are finalized.

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<sup>4</sup> See *B&M Land and Livestock, LLC*, 498 B.R. 262 (Bankr. D. Nev. 2013) (holding a Chapter 7 Trustee appointed in a case where a debtor has a membership interest in a single-member limited liability company automatically has the right to manage that company without the need to take further actions to comply with state law); see also *In re Cleveland*, 519 B.R. 304, 306 (D. Nev. 2014) (“Numerous bankruptcy courts have held, and the Court agrees, that where a debtor has a membership interest in a single-member LLC and files a petition for bankruptcy under Chapter 7, the Chapter 7 trustee succeeds to all of the debtor’s rights, including the right to control that entity, and a trustee need not take any further action to comply with state law before exercising such control.”); *In re Albright*, 291 B.R. 538 (Bankr. D. Colo 2003) (holding that a debtor’s bankruptcy filing, where the debtor was the only member of a limited liability company, effectively assigned her entire membership interest in the limited liability company to the bankruptcy estate, and the Chapter 7 Trustee obtained all of the rights to control management of the limited liability company).

12. Cushman has advised the Trustee that it is in the best interests of the TIC Owners to employ an appraiser.

13. The Trustee has received a proposal from Keith Harper (“Mr. Harper”) to act as an appraiser for the TIC Owners. A copy of the proposed terms of employment for Mr. Harper is attached to the Harper Declaration as **Exhibit “1”**.

14. The total cost of the Appraisal is \$5,000.00 (the “Appraisal Fee”). The Debtor’s bankruptcy estate will be responsible for paying forty percent (40%) of the Appraisal Fee, or \$2,000. Brookfield will be responsible for paying sixty percent (60%) of the Appraisal Fee, or \$3,000.

15. The Trustee now seeks to employ Mr. Harper to conduct an appraisal of the Property and act as her appraiser in negotiations with the RTC.

16. On December 17, 2019, the Trustee filed a *Notice of Assets & Notice to File Proofs of Claim* [ECF No. 40] that established March 25, 2020 as the deadline to timely file proofs of claim.

17. On February 14, 2020, the Law Office of Hayes & Welsh (“H&W”) filed a proof of claim [Claim 1-1] that identified a general unsecured claim in the amount of \$77,732.36.

18. On March 12, 2020, Russell L. Nype (“Nype”) filed a proof of claim [Claim 2-1] that identified a general unsecured claim in the amount of \$4,484,944.19.

19. On October 22, 2021, H&W withdrew their proof of claim, leaving Nype as the only creditor in the case [ECF No. 87].

20. Counsel for the Trustee has contacted counsel for Nype to discuss the employment of Mr. Harper. Nype has consented to the employment of Mr. Harper and the payment of \$2,000 from bankruptcy estate assets to obtain an appraisal of the Property.

21. The Trustee is currently holding funds in the amount of \$106,559.53.

## II. JURISDICTION AND VENUE

22. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A). The statutory basis for the relief sought are Sections 327, 328, and 330 and FRBP 2014 and 2016. Venue of Debtor’s Chapter 7

1 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### 2 **III. MR. HARPER**

3 23. Mr. Harper is well suited to conduct the appraisal required by the Trustee. Mr.  
4 Harper has over thirty-five years of experience as a commercial real estate appraiser. Mr. Harper  
5 will be able to determine the value of the Property and engage with the appraisers retained by the  
6 RTC.

7 24. Accordingly, the Trustee has determined that Mr. Harper has the resources and  
8 experience necessary to effectively appraise the Property in a manner that will further the  
9 negotiations with the RTC.

10 25. Following the Trustee's request that Mr. Harper act as her appraiser, Mr. Harper  
11 conducted a search of its client list.

12 26. Based upon this review of its client list, Mr. Harper determined that he is a  
13 "disinterested person" as defined by 11 U.S.C. § 101 and does not hold or represent any interest  
14 adverse to the bankruptcy estate.

15 27. The conclusion that Mr. Harper is a "disinterested" person within the meaning of  
16 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a) is based upon the fact neither Mr. Harper  
17 nor any of his associates:

- 18 (a) Are or were a creditor, equity security holder, or insider of  
19 the Debtors except as set forth herein;
- 20 (b) Are or were, within two (2) years before the date of the  
21 filing the bankruptcy petition, a director, officer or  
22 employee of Debtors as specified in subparagraph (c) of  
23 Section 101(14) except as set forth herein;
- 24 (c) Hold, or have ever held, an interest materially adverse to the  
25 interest of the estate or of any class of creditors, equity  
26 holders, or parties in interest, by reason of any direct or  
27 indirect relationship to, or interest in, the Debtors or for any  
28 other reason except as stated herein;
- (d) Represent, or have ever represented, the Debtors, insiders of  
the Debtors, creditors of the Debtors, any other party in  
interest, or their respective attorneys and accountants except  
as set forth herein; and

(3) Is a relative or employee of the U.S. Trustee or a Bankruptcy Judge except as stated herein.

28. Except as set forth herein, Mr. Harper has no connections with the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee and that Mr. Harper and each of his employees are all disinterested persons pursuant to 11 U.S.C. § 101(14).

29. Mr. Harper represents no interest that is adverse to the Trustee, to the Debtors' estate, any creditor, any party in interest, the U.S. Trustee, or any attorney or accountant employed by the foregoing, in matters upon which he will be engaged as an appraiser.

30. The Trustee submits that Mr. Harper is a disinterested person within the meaning of 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to the appraisal of the Property.

31. Subject to Court approval, the Trustee seeks to pay \$2,000.00 to Mr. Harper to act as appraiser for the Property.

32. This Application will be submitted to the United States Trustee upon the filing of the same.

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**IV. CONCLUSION**

For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order:  
(a) authorizing the Trustee to employ Mr. Harper to act as appraiser based upon the terms set forth in this Application; (b) authorizing a payment of \$2,000 to Mr. Harper for the cost of the appraisal without further court order; and (c) for such other and further relief as is just and proper.

Dated this 14th day of November, 2022.

**HOUMAND LAW FIRM, LTD.**

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